

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Amendment of Section 73.606 (b)
Table of Allotments
Television Broadcast Stations
and Amendment of Section 73.622(b)
Table of Allotments
Digital Television Stations
(Ellendale and Edgeley, North Dakota)

MM Docket No.
RM

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULEMAKING

Prairie Public Broadcasting, Inc. ("Prairie"), licensee of noncommercial educational television Station KJRE, NTSC Channel *19, DTV Channel *20, Ellendale, North Dakota, by its attorneys, respectfully petitions the Commission, pursuant to Section 1.420 of the Commission's Rules, to amend the Tables of Allotments, 47 C.F.R. § 73.606(b) and 47 C.F.R. § 73.622(b), to reallocate NTSC Channel *19 and DTV Channel *20 from Ellendale to Edgeley, North Dakota and to modify Prairie's authorization for KJRE accordingly. Prairie seeks this change in community of license to remedy a long-standing allocation and coverage problem relating to the provision of statewide public TV service in the southeastern region of North Dakota.

I. Background

Prairie is a non-profit 501(c)(3) organization serving the State of North Dakota through public radio and television, technological and educational services, and community projects.

Prairie's broadcast mission, since its inception in 1959, has been to provide the people of its

01-395

viewing and listening area with an indispensable radio and television programming service that educates, entertains, informs and enlightens. Prairie pursues this mission as the licensee of five noncommercial educational TV stations and six noncommercial educational radio stations in the State of North Dakota, including Station KJRE(TV). As the only provider of public radio and television programming in North Dakota, Prairie endeavors to serve as many areas of the state as is practicable. North Dakota presents special challenges to Prairie in this regard because it is one of the most sparsely populated states in the country.

As a public broadcaster, Prairie has faced many challenges over its more than 40 years of serving North Dakota communities. The organization experienced some especially difficult financial circumstances in 1995, when, in order to maintain statewide service, Prairie was forced to restructure and lay off some employees. In order to rebound from these circumstances, Prairie needed to drastically reduce its operating costs. At that time, Prairie began operating Station KJRE at reduced power as part of its overall cost-cutting plan. Since that time, Prairie has received no complaints from the public about its low power operation. The cost-cutting measures, along with the support of viewers and their communities, have allowed Prairie to continue to provide award-winning public TV programming to residents throughout the state.

II. History

In 1965, the Commission allotted local educational television channels to various cities, including Ellendale, North Dakota.¹ Where no statewide allocation plan was submitted to the Commission by the individual states, allocations of educational channels were determined by computer analysis, on the basis of a survey administered by the National Association of Educational Broadcasters (“NAEB”) and petitions from individual state and educational sources.

¹ Fourth Report and Order on UHF Television Expansion, 41 F.C.C. 1082 (1965). See Appendix II.

The Commission generally reserved channels in cities with populations of 100,000 or greater to provide for flexibility in assigning future channels in areas where it was difficult to predict future commercial or educational service needs. The Commission only reserved channels in cities like Ellendale, with a population of 25,000 or less, when it was necessary to do so in order to ensure statewide coverage of educational service or to provide for existing authorizations or applications.²

Thus, the Commission's original objective in reserving the Ellendale channel in 1965 was to ensure the future availability of a channel in a location to provide statewide educational television coverage, not on the basis of the particular need or characteristics of the community of Ellendale itself. Even then, the Commission noted a need for flexibility based on future educational service needs.

On December 21, 1989, Prairie filed an application (File No. BPET-891221KF) for a construction permit for a new television station on Channel *19 at Ellendale. Prairie intended the new station to serve as a satellite/repeater of KFME-TV, Fargo, North Dakota, and thereby extend Prairie's public television service to a portion of North Dakota where off-air public television service was previously unavailable.

A 1989 National Telecommunications and Information Administration ("NTIA") study described this southeastern region of the state as North Dakota's most serious public television coverage problem.³ At the time, 68,000 people in North Dakota could not receive a reliable public television signal, if they received a signal at all. To remedy this significant gap in coverage, Prairie applied for the channel previously allocated to Ellendale. Extending the

² *Id.* at ¶ 13.

³ U.S. Dept. of Commerce, National Telecommunication and Information Administration, Public Broadcasting Coverage in the United States 178-179 (1989), attached as Exhibit 1.

broadcast signal from the preexisting Fargo station would provide an efficient and economical way to provide coverage to this unserved region, and effectively make Prairie's public television service available to all of North Dakota.⁴

One issue with Prairie's construction permit application, however, was that the transmitter location providing best coverage of the public TV coverage gap in the state did not result in the City Grade contour actually covering Ellendale, the allotment city of license for Channel *19. Ellendale, at that time, had no off-the-air television signals of any kind, and the area to the north of Ellendale was only served by a single television service. If Prairie decided to use a transmitter site further south and east (which would have provided Ellendale with City Grade coverage), its service would have extended into a region of South Dakota already adequately served by other public TV stations and pulled back from areas in North Dakota needing coverage.⁵ Prairie's proposed station, however, would serve 12,000 people in outlying rural areas who did not receive cable service, as well as Ellendale's 2,000 residents, even if it would only provide Grade A (rather than City Grade) service to Ellendale. In order to fill the then-existing service gap in southeastern North Dakota, Prairie requested a waiver of Section 73.685 of the Commission's Rules requiring city-grade coverage for the community of license.

On January 30, 1991, the FCC granted Prairie's request for a waiver of the city grade coverage rule. The Commission stated that it had long recognized the unique role statewide educational television systems play in providing public television service to the entire state in which they operate. The FCC agreed that the station at Ellendale would fill-in a service gap by providing southeastern North Dakota with its first ever off-air public broadcasting service.⁶ The

⁴ Id. at 15-18, attached as Exhibit 2.

⁵ See contour map of North and South Dakota, attached as Exhibit 3.

⁶ See attached Exhibit 4.

FCC also recognized that Prairie was unable to afford the construction and operation costs required to construct a more powerful facility at its Fargo site that would provide a city-grade signal to Ellendale. The Commission determined that if it insisted on such a signal, the station simply would not be built, thus denying thousands of persons access to public television in that area.⁷

The FCC granted the Prairie Ellendale application on September 4, 1991, and Station KJRE(TV) began operations on May 12, 1992. As noted above, Ellendale was chosen as a location for a reserved allocation by the Commission in 1965, before the public television network in North Dakota was even started, let alone completed. The Ellendale allocation was intended to serve as “placeholder” for statewide public TV coverage. The FCC could not have known, in 1965, how statewide public television would be configured in North Dakota. As it turned out, the Ellendale facility was the last of the North Dakota public TV network stations to be built, and the Ellendale allotment was selected because it allowed Prairie to “plug the hole” in the state’s noncommercial television coverage.

In the years shortly after the station became operational, Prairie experienced extremely severe financial difficulties, compounded by reduced federal and state funding support, that forced it to cut costs drastically. By 1996, Prairie was forced to operate the Ellendale station at reduced power in an effort to cut costs. The Mass Media Bureau of the FCC has granted Prairie Special Temporary Authority (“STA”) to continue reduced-power operations through December 7, 2001, but has also suggested that Prairie seek to change KJRE’s community of license to one within the city-grade contour in order to finally remedy the city-grade coverage problem, rather than seek additional rule waivers based on the now-exacerbated city-grade coverage issue.

⁷ See FCC letter granting waiver, attached as Exhibit 5.

III. This Case Falls under the “Rare Circumstances” Exception to the Commission’s Policy Restricting the Removal of a Community’s Sole Local Broadcast Service

Section 1.420(i) of the Commission Rules states:

In the course of the rule making proceeding to amend Sec. 73.202(b) or Sec. 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee’s or permittee’s present assignment.

47 C.F.R. § 1.420(i).

The stated FCC policy on changing a broadcast station’s community of license is that the proposal must be mutually exclusive with the current authorization and that the reallocation must result in a preferential arrangement of allotments. See Modification of FM and TV Authorization to Specify a New Community of License (“Change of Community R&O”), 4 FCC Rcd 4870 (1989), recon. granted in part (“Change of Community MO&O”), 5 FCC Rcd 7094 (1990). The television allotment priorities are:

(1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice of at least two television services to all parts of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

Sixth Report and Order, 41 FCC 148, 167 (1952).

Moreover, as noted above, the Commission used different priorities in allotting educational channels throughout the country. It was impossible for the Commission to determine the precise pattern of future educational uses of the channels, therefore, the Commission chose to maintain needed flexibility in assigning channels, especially to those communities with populations of less than 25,000.

Although the Community of License MO&O generally restricts the removal of a community's sole local broadcast service, the Commission has long recognized a narrow exception to this policy in the "rare circumstances" where removing a local service would serve the public interest.⁸ In this case, reallocation of KJRE(TV), Channel *19 (DTV Channel *20) from Ellendale to Edgeley, North Dakota would provide a community of license designation that is consistent with statewide educational television coverage and city grade coverage of Channel *19 and, therefore, serve the public interest.⁹ Failure to reallocate the channel may jeopardize public television service to the southeastern region of North Dakota due to its very sparse population. It would also be contrary to the public interest, as the Mass Media Bureau has indicated that the city-grade coverage issue must be resolved.

**IV. Reallocation NTSC Channel *19 (DTV Channel *20)
from Ellendale to Edgeley, North Dakota
will Serve the Public Interest**

First, it is now clear that the allocation of Channel *19 to Ellendale over thirty-five years ago was based on an "educated guess" that has in fact become out of step with the development of statewide public television service in North Dakota. Requiring that Ellendale be the community of license no longer promotes the goal, shared by Prairie and the Commission, of ensuring statewide public television. Previous city-grade coverage waivers granted by the FCC demonstrate the Commission's unwillingness to force Prairie to choose between operating a station that would provide a third educational broadcast service to South Dakota while leaving much of North Dakota unserved, or spending tens of thousands of unavailable dollars to provide

⁸ 5 FCC Rcd. 7094, 7096 (1990).

⁹ See North Dakota map of contours attached as Exhibit 6.

a city-grade signal to Ellendale.¹⁰ Re-allotment would help ensure continued statewide public television coverage, and would resolve a geographic anomaly that currently requires Prairie to devote significant resources to seeking additional city-grade waivers (which the Mass Media Bureau staff has indicated it is not likely to continue to grant).

Second, failure to reallocate the channel could jeopardize continued public television service to the southeastern area of the state. North Dakota is one of the most sparsely populated states in the country, with two thirds of its counties classified as “frontier counties” because they have fewer than 6 people per square mile. Many of these frontier counties are located in the southeastern portion of the state served by Station KJRE.¹¹ The Ellendale station was built in an effort to provide public television service to otherwise unserved areas of North Dakota consistent with the Congressional goals set forth in Section 396 of the Communications Act. Reallotment would allow Prairie to continue to serve this sparsely populated area, and would promote the Commission’s objective of ensuring statewide public television coverage.

Third, Ellendale is not preferential to Edgeley, North Dakota, as a community of license. The cities, roughly the same size, both have less than 25,000 residents (the Commission’s cut-off in 1965 for allotment purposes). In fact, both cities have less than 2,000 residents. Similar to Ellendale, Edgeley was founded in 1886 and boasts its own public high school, a local newspaper, seven churches, one campground, and one country club with an associated golf course. The school system and community services in both communities are roughly equivalent. Edgeley, however, is within the KLRE’s City Grade contour and, as such, receives the city-grade signal required by the Commission.¹² It is also a census-designated community, which

¹⁰ See FCC letter, attached as Exhibit 5.

¹¹ See map of North Dakota counties, attached as Exhibit 7.

¹² See Exhibit 8.

presumptively qualifies it as an eligible community for allocation purposes. See Cal-Nev-Ari, Boulder City, and Las Vegas, NE, 10 F.C.C.R. 7717 (P&F 1995).

Fourth, despite the fact that KJRE(TV) has been operating at reduced power since 1996, the public has not complained. Tests performed have shown that all the cable television systems that carried KJRE(TV) when operating at its full power continue to receive the station's signal at reduced power. Moreover, the impact on viewers who do not have cable in the fringe areas is minimal because of their ability to receive and view Prairie's other stations KBME-TV and KFME-TV. Even when operating at reduced power, KJRE(TV) is providing a valuable off-air service to rural southeastern North Dakota, including Grade B service to Ellendale. In fact, KJRE(TV) continues to provide public television service to approximately 6,430 persons residing within the predicted Grade B contour who would not otherwise receive such service.

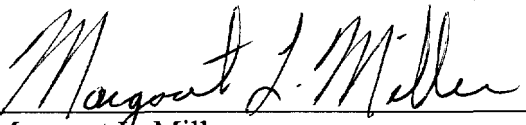
Finally, this is an isolated case that will not set a harmful precedent. This case is limited to its very rare circumstances—a statewide public television network in one of the most sparsely populated states in the country that is trying to provide broad public television coverage throughout the state in a cost-effective manner. The FCC previously recognized the need for public broadcasters like Prairie to conserve expenditures when it granted Prairie's city-grade coverage waiver.¹³ Thus, the Commission need not be concerned that reallocation in this rare circumstance would establish an exception that threatens to swallow the rule.

¹³ See FCC letter, at Exhibit 5.

V. Conclusion

For the above reasons, Prairie respectfully requests that the Commission amend the Table of Television Allotments (Section 73.606(b)) and Table of Digital Television Allotments (Section 73.622(b)) by issuing a Notice of Proposed Rulemaking to reallocate NTSC Channel *19 and DTV Channel *20 from Ellendale to Edgeley, North Dakota.

PRAIRIE PUBLIC BROADCASTING, INC.

By: 
Margaret L. Miller

Its Attorney

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**Exhibit 1: Map of Educational TV Signal Coverage by Region in
North Dakota, excerpted from National Telecommunication and
Information Administration, Public Broadcasting Coverage in the
United States 178-179 (1989)**

Region II

Region II, which is Bowman County in the extreme southwest, is extremely populated, being the area known as the "Badlands." It is highly unlikely that a signal will be made to extend a signal there.

Region III

Region III is the hour-glass shaped unserved area in the north central part of the state, ranging from the Canadian border to the middle of the state near Fessenden. PPB believes that this region is covered by the extremes of the contours from KSRE, Minot and KGFE, Grand Forks. PPB notes that the terrain in this region is somewhat higher than that found immediately to the south and that this factor allows for reliable coverage even beyond the formal Grade B contours of those two stations.

(PPB may be adding a TV translator to an already-covered area around the community of Bottineau, which is just to the west of the "white area" being discussed. According to PPB, a slight interference problem has arisen there involving the signal of KSRE, Minot, which operates on channel 6. The interference situation concerns the signal of public radio station KEYA-FM, which operates from the nearby Turtle Mountain Indian Reservation. A translator would resolve the matter.)

Region IV

Region IV is the unserved area starting at Fessenden and curving south to the South Dakota boundary. This region represents North Dakota's most serious public television coverage problem. The greater part of the region, from Fessenden to the Jamestown area, is the James River valley, the terrain of which is relatively low. PPB believes that a major satellite repeater station located on the high terrain west of the James River and approximately 15 miles south of Jamestown would emit a signal that would cover almost the whole of this "white space," all the way north to Fessenden. Funding for the nonfederal share of a grant project that would activate such a station is pending before the North Dakota Legislative Assembly.

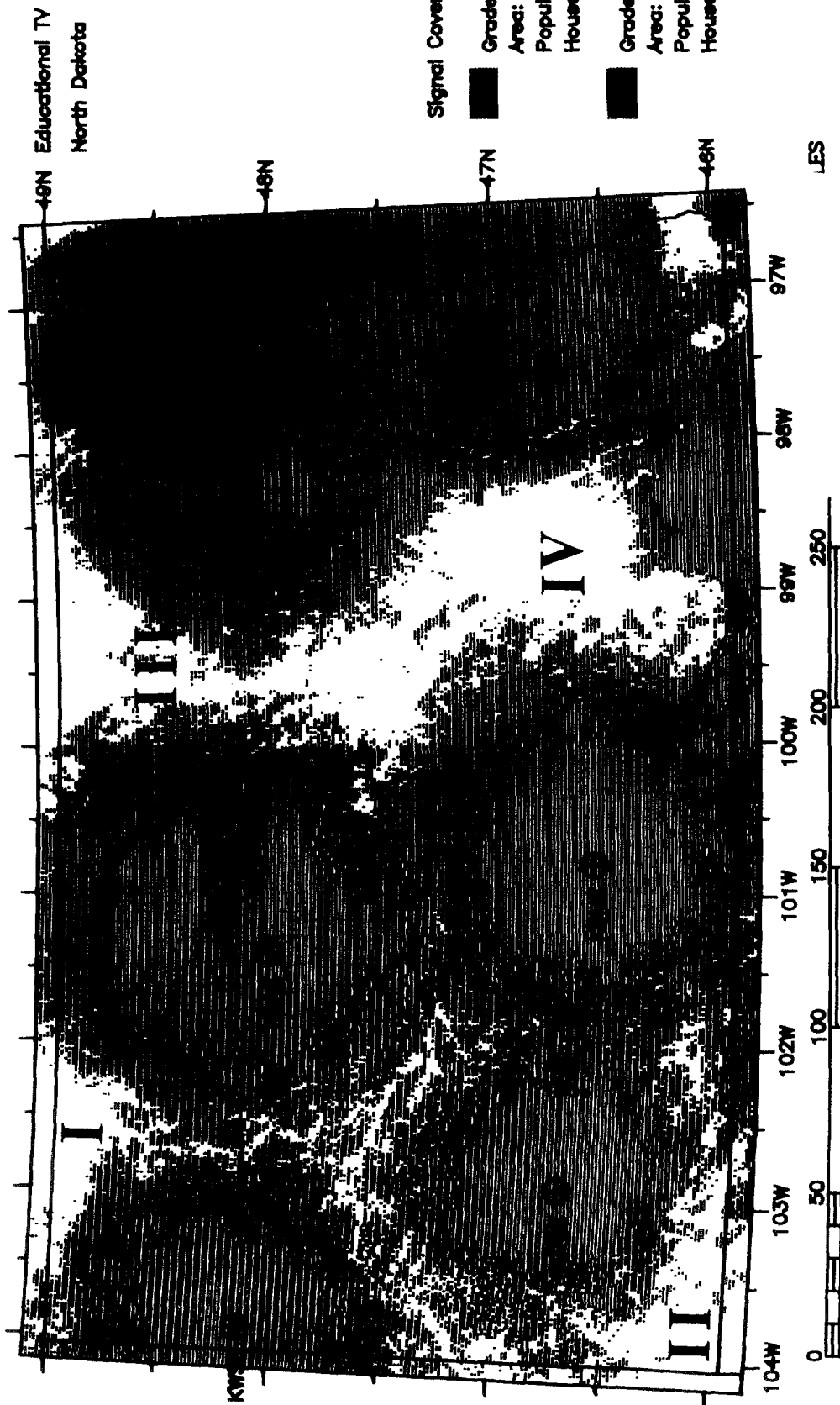


Exhibit 2: “Analysis of Public Television Coverage: Summary of National Coverage,” excerpted from National Telecommunication and Information Administration, Public Broadcasting Coverage in the United States 15-18 (1989)

Analysis Of Public Television Coverage

Summary Of National Coverage

According to this study, as of the end of 1988 approximately 94 percent of the United States could receive an over-the-air public television signal. This coverage percentage translates to 213,223,000 persons receiving such a signal.

The study also shows that 75,608,000 households nationwide -- out of a national total of 80,389,000 households -- receive at least one over-the-air public television signal. Of the households served by over-the-air public television, approximately 54,417,000 -- or 72 percent -- receive two or more such signals.

(For a display of state and regional coverage statistics, see Tables 1-3 at the end of this analysis. A national public television coverage map will also be found after the tables.)

This finding is generally consistent with that of NTIA's 1982 study, *A Plan for Public Telecommunications Facilities*, which concluded that 92 percent of the U.S. population could then receive an over-the-air public television signal from licensed public television entities. It estimated that the anticipated coverage of stations under construction would increase the coverage to 93 percent. And, when stations with construction applications then pending before the Federal Communications Commission were considered, the study calculated the future coverage level to be approximately 94 percent.

Few general explanatory themes about coverage and lack of coverage emerge from the study, the main reason being that so few of the population are unserved. Six states, plus the District of Columbia, have complete coverage. Fully 34 states can boast population coverage ranging from 90-99 percent. Seven states have coverage from 79-89 percent and only three states have coverage under 79 percent.

Some common factors arise from a review of the situations of these three latter states: Montana, Alaska and Wyoming. All are very big states, of course, with much "open space." All three have rugged and mountainous terrain. And the three have relatively low population levels; all three have under 1,000,000 residents and two of the three have under 500,000.

Looking at the national coverage pattern, a slight eastern tilt towards high-coverage percentages is evident. Of the 21 states whose population coverage falls below the 94 percent national average, 16 are west of the Mississippi River. Of those 21 states, five have coverage percentages below 80 percent and of these, four lie west of the Mississippi. On the other hand, the District of Columbia and five of the six states that have 100 percent coverage lie east of the Mississippi -- and the sixth state is Louisiana, which of course borders the river. This tilt probably reflects the higher levels of population density

in the eastern section of the country, which makes it relatively easy to achieve very high coverage percentages.

Another interesting point has to do with unified service within a state. Of the six states that have full coverage, four have organizations that have assumed responsibility for achieving coverage in all or a substantial part of the state in question.

The Role Of Cable Television

The present study focused on coverage of over-the-air public television. Nonetheless, NTIA's research into unserved areas shows clearly that cable television is a valuable complement to over-the-air broadcasting as a provider of public television.

One reason is cable television's reach, which is now truly impressive. The October 1988 report, *NTIA TELECOM 2000*, found that in 1988, approximately 8,500 cable television systems were operating in the United States. Moreover, approximately 80 percent of the nation's households had access to cable television, with more than half of them subscribers.

The dramatic increase in the number of cable systems over the past twenty years has allowed the extension of public television signals into areas that do not receive -- and perhaps never will receive -- acceptable over-the-air signals.

Montana is a case in point. It has by far the lowest percentage of over-the-air coverage: approximately 22 percent. NTIA's research, however, indicates that Montana has far-reaching cable television services, most of which presumably offer a public television signal. Our research into this aspect of public television in Montana was admittedly cursory, but it was enough to give us confidence that at least half of the Montana population has access to a public television signal.

Major Unserved Markets

In its 1982 study of public telecommunications coverage, NTIA identified 13 major markets unserved by a broadcast public television station. Since that time, public television stations have been constructed in four of these communities: Amarillo, TX (KACV-TV), Riverton, WY (KCWC-TV), Odessa, TX (KOCV-TV), and Joplin, MO (KOZJ-TV).

Of the nine remaining markets still unserved by an over-the-air signal, all have cable television systems offering at least one public television service. The nine markets are: Yuma, AZ; Bakersfield, CA; Rockford, IL; Lafayette, IN; Great Falls, MT; Missoula/Butte, MT; Abilene, TX; San Angelo, TX; and Cheyenne, WY.

Reaching Unserved Areas

NTIA's analysis of the potential for public television signal extension into unserved areas clearly points toward one conclusion: it would appear that little or no need exists to construct new full-service, "stand-alone" public television stations in order to provide first public television coverage to the remaining unserved areas.

A corollary to this is that additional public television coverage to unserved areas could be most efficiently and economically provided by extending the signals of existing public television stations. Speaking in technical terms, this would be accomplished primarily through low-power stations, translators or -- if the financial support and population base is present -- satellite repeater stations.

Why are we not likely to see the activation of many new full-service stations? Costs lie at the heart of the problem. Establishing a station capable of being a Public Broadcasting System affiliate can cost anywhere from \$750,000 to \$2,000,000 in hardware expenses alone, and this assumes that no tower installation is required. Maintaining and operating the station will cost, at a minimum, \$750,000 to \$1,000,000 a year.

Depending on a number of variables, even a major satellite repeater station, if it involves a UHF transmitter and, say, three microwave links worth of equipment, could cost approximately \$1,500,000. A television translator will most likely cost up to \$40,000 and the total will be more if the translator must be connected to the host station via microwave. (Detailed estimates of representative construction costs of repeater stations and translators will be found in Appendix B.)

Justifying this kind of expense won't be easy for any local entity and will be especially difficult for organizations in rural communities. And, as we have seen, for the most part the remaining unserved regions are quite rural.

Primarily in recognition of this expense factor, reaching these rural areas might well be facilitated by the presence of a single local organization with the responsibility of reaching rural areas in the state.

We should note, however, that communications satellites, in combination with low-power television stations, now allow for cost-effective delivery of public television services to small, rural communities -- even ones in truly remote areas. Otherwise, these areas would most likely have to do without an over-the-air public television service. One entity providing such a service is Rural Television System, Inc. ("RTS").

In brief, the RTS configuration involves a low-power television station in the community. The latter transmits its PBS programming choices to the RTS automated switching center in Carson City, Nevada. RTS directs whatever programming has been ordered to the community in question from the communications satellite broadcasting the PBS signal. Equipping an RTS-affiliated station typically costs approximately \$85,000/\$95,000. A

station requires one local technical person, usually a volunteer, as staff. It also requires an annual service charge, calculated on the basis of approximately \$6 per household served, paid to the central organization.

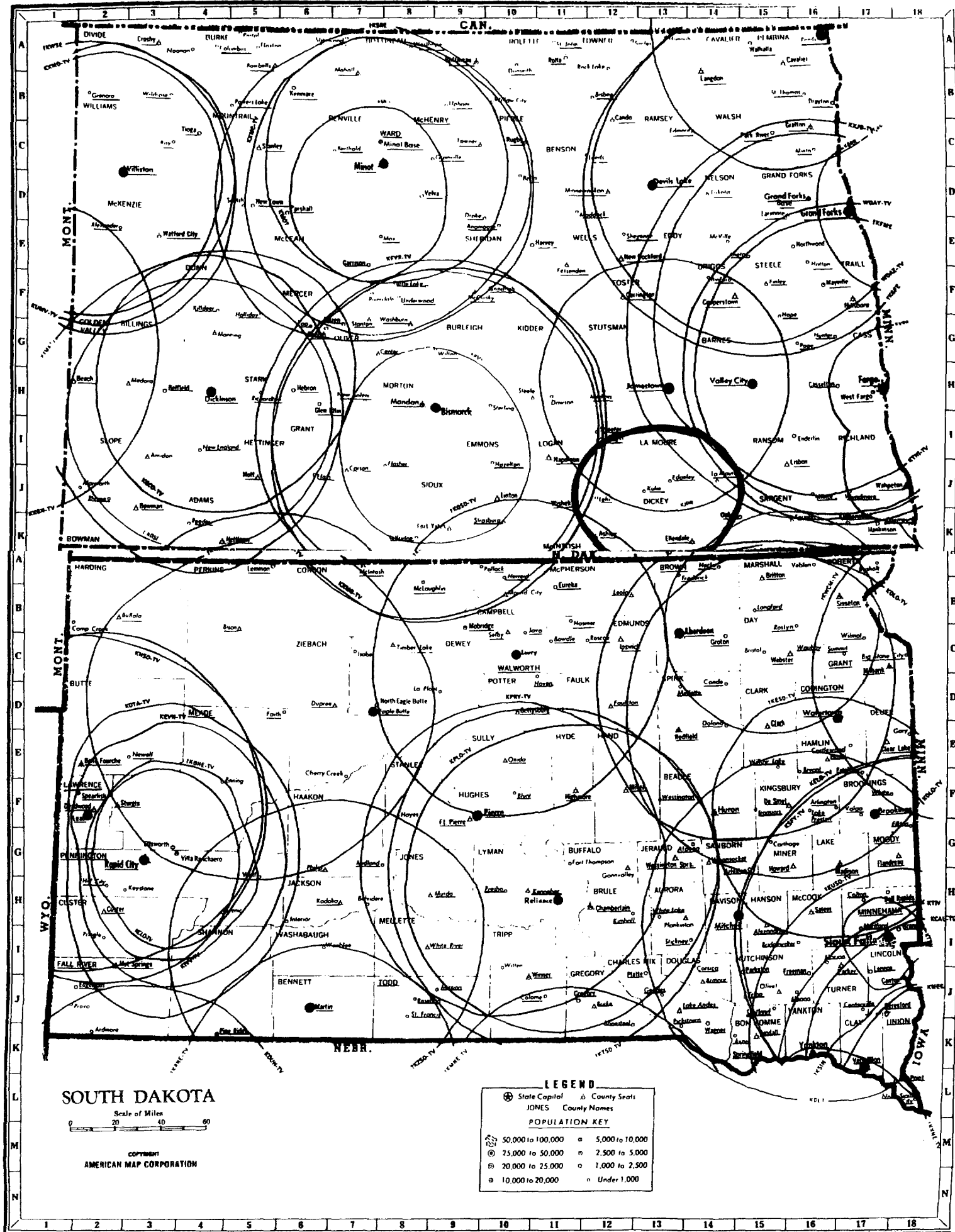
A final point: The percentage of people in "unserved" rural areas who in fact have access to public television would increase if we were to consider the rural residents with home dish antennas. According to NTIA's recent publication, *NTIA TELECOM 2000*, as of July 1988, approximately two million satellite home receive antennas were operating nationwide; about 1.2 million of them were in rural areas. These home dish antennas are able to receive all Public Broadcasting Service national programming from communications satellites. A recent Federal law stipulated that the Public Broadcasting Service must transmit this programming by a "clear feed;" i.e., not "scrambled." In fact, to facilitate planning for the reception of its programming, the Public Broadcasting Service (PBS) offers a schedule of its "clear feed" programs to anyone who wants one. PBS is now sending out about 2,000 such program guides a month to interested home dish antenna owners. Naturally, no local programming would be available to someone receiving a public television signal in this manner.

Other Factors Hindering Extension

A few other factors might, from place to place and from time to time, impede efforts to extend over-the-air public television signals to currently unserved areas. For example, the required spacing between authorized channels might be a consideration. Also, agreements with Mexico and Canada about television channel allocations could delay -- and perhaps block -- the construction permit regulatory procedures.

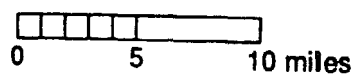
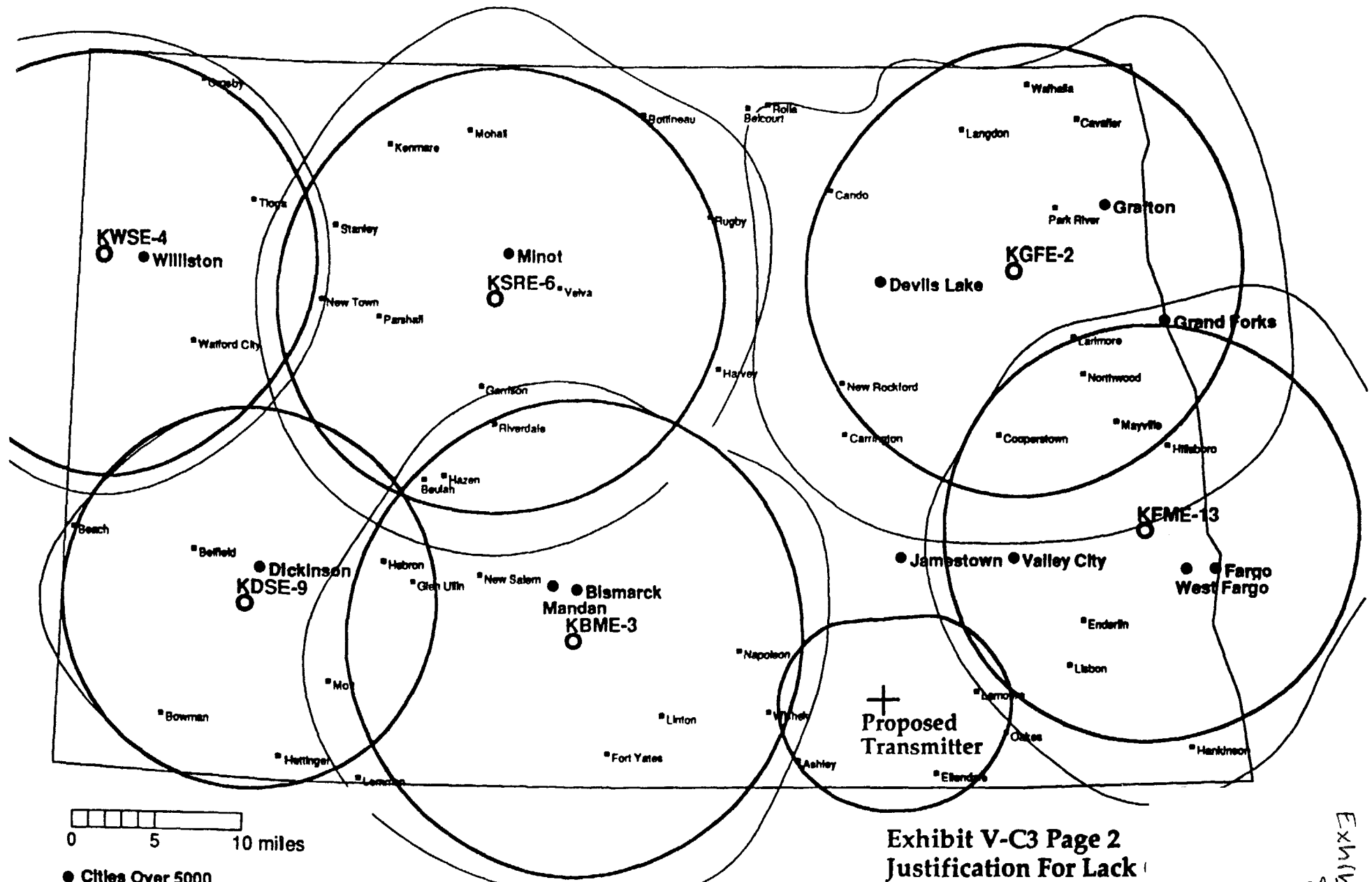
And, in some locations, the pervasiveness of cable television coverage might act as a disincentive to aggressive over-the-air signal extension.

Exhibit 3: Contour Map of North Dakota and South Dakota



**Exhibit 4: Contour Map of North Dakota, showing proposed
transmitter site for Prairie Pubic TV Station KJRE, Ellendale,
North Dakota in 1990**

EXHIBIT V



- Cities Over 5000
- Cities 1000-5000

— FCC grade B Contours
- - - AreaPop Grade B Contours

Exhibit V-C3 Page 2
Justification For Lack
City Grade Service To
Prairie Public Broadcas
A. Bruce Jacobs - 5/23/

Exhibit
4

**Exhibit 5: Federal Communication Commission letter granting City
Grade coverage rule waiver, January 30, 1991**

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JAN 30 1991

IN REPLY

8940

Dennis L. Falk, President
Prairie Public Broadcasting, Inc.
P.O. Box 3240
Fargo, ND 58108

Re: Channel 19
Ellendale, ND
BPET-891221KF

Dear Mr. Falk:

This is with respect to the above-captioned application of Prairie Public Broadcasting, Inc. (Prairie) for a new noncommercial educational television station to operate on Channel 19 in Ellendale, North Dakota.

Prairie proposes to operate the station from a tower 152 meters (499 feet) above ground at a site near Kulm, North Dakota, approximately 42 kilometers (26 miles) northwest of Ellendale. Prairie also proposes to utilize 405 kW maximum visual effective radiated power.¹ Operating at those facilities, Prairie will not place an 80 dBu signal over Ellendale, as required by Section 73.685(a) of the Commission's Rules,² and you have, therefore, requested waiver of the rule.

In support of your waiver request, you state that Prairie operates North Dakota's state public broadcasting network, which currently consists of six television and four FM radio stations. Prairie adds that its goal is to provide public broadcasting services to all of the citizens of the state, and it proposes to operate the Ellendale station to fill in a substantial area in southeastern North Dakota that does not currently receive off-the-air service from the state educational network. Ellendale, however, is located only five miles from the South Dakota border, and utilizing a transmitter site further to the south and east would extend the station's service area further into South

¹ Prairie does not propose to have a local studio in Ellendale. Rather, the applicant proposes to broadcast programming originated from Prairie's studio at Station KFME (TV) in Fargo, which currently serves as the main studio for all six television stations in the state system. The Commission has traditionally allowed educational broadcast systems to operate in the manner proposed. See Nebraska Educational Television Commission, 4 RR2d 771 (1965).

² Section 73.685(a) provides, in relevant part, that a UHF television station's transmitter shall be chosen so that an 80 dBu signal will be provided over the entire principal community to be served.

Dakota, providing coverage to areas that already receive Grade B public television service from Stations KDSD-TV, Aberdeen, South Dakota, and KQSD-TV, Lowry, South Dakota. By contrast, Ellendale currently receives no off-the-air television signals of any kind,³ and the area north of Ellendale receives service from only KJRR-TV, Jamestown, North Dakota, a Fox network affiliate. Prairie contends that the proposed station, which will provide Grade A service to Ellendale, will fill the current service gap. Specifically, Prairie notes that the station will serve more than 12,000 persons in outlying rural areas, who do not receive cable service, as well as the 2,000 residents of Ellendale.

You further state that you considered constructing a more powerful facility at your current site in an effort to provide a city-grade signal to Ellendale. The Federal Aviation Administration, however, has limited the height of your tower to only 500 feet above ground, and you estimate that a significant increase in power would increase construction costs by approximately \$200,000 and would add \$50,000 per year to operating costs. You add that moving the transmitter further to the north and increasing the tower's height to 1,000 feet would cost an additional \$400,000. You maintain that you would be unable to afford either of these added expenses. Moreover, you contend that your proposed site is one of the few in the area that has three-phase power available and that it is located near a well maintained access road.

After a careful review of your application, we are persuaded that grant of your waiver request would serve the public interest. The Commission has long recognized the unique role played by statewide educational television systems in providing public television service to the entire state in which they operate. Prairie has established that it would not be able to maximize its service to the State of North Dakota without a significant strain on its financial resources, and we are mindful of its need to conserve expenditures. If we were to deny Prairie's waiver request, we would place them in the situation of having to choose between two unsatisfactory proposals -- operating a station that provides a third educational service to much of South Dakota while leaving much of North Dakota unserved or adding tens of thousands of dollars of additional costs. We do not wish to place Prairie in such a predicament.

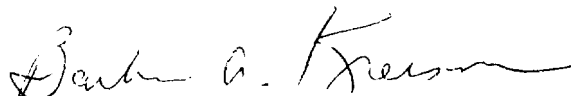
The Commission has previously waived Section 73.685 to permit a state public television network station to operate a station without providing city-grade coverage to the community of license. Nebraska Educational Television

³ Ellendale is currently served by a cable television system that reaches 86-percent of the community's population. One of the stations carried by the cable system is noncommercial educational Station KDSD-TV, Aberdeen, South Dakota. None of the North Dakota educational television stations, however, are carried by the cable system.

Commission, 4 R.R.2d 771 (1965). In that case, the Commission allowed a state educational network to construct a Lexington, Nebraska, station that did not provide a city-grade signal to the community of license. In approving that proposal, the Commission gave great weight to the applicant's argument that it was not possible to locate the transmitter closer to the community of license without "wasting" much of the proposed service over an adjacent state and providing insufficient service to the State of Nebraska. We find the Nebraska case to be controlling here. It should be emphasized, however, that this does not signify a general departure from strict adherence to the provisions of Section 73.685. Rather, it is a recognition of the part a statewide educational television system plays in providing public television service to the entire state in which it operates.

Accordingly, for the reasons stated above, Sections 73.685 and 73.1125 of the Rules ARE WAIVED with respect to the above-captioned application, and the application may be granted upon a showing that it is financially qualified.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barbara A. Kreisman", with a long, sweeping horizontal line extending to the right.

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

cc: Todd D. Gray, Esq.

Exhibit 6: North Dakota Map of Station Coverage Contours

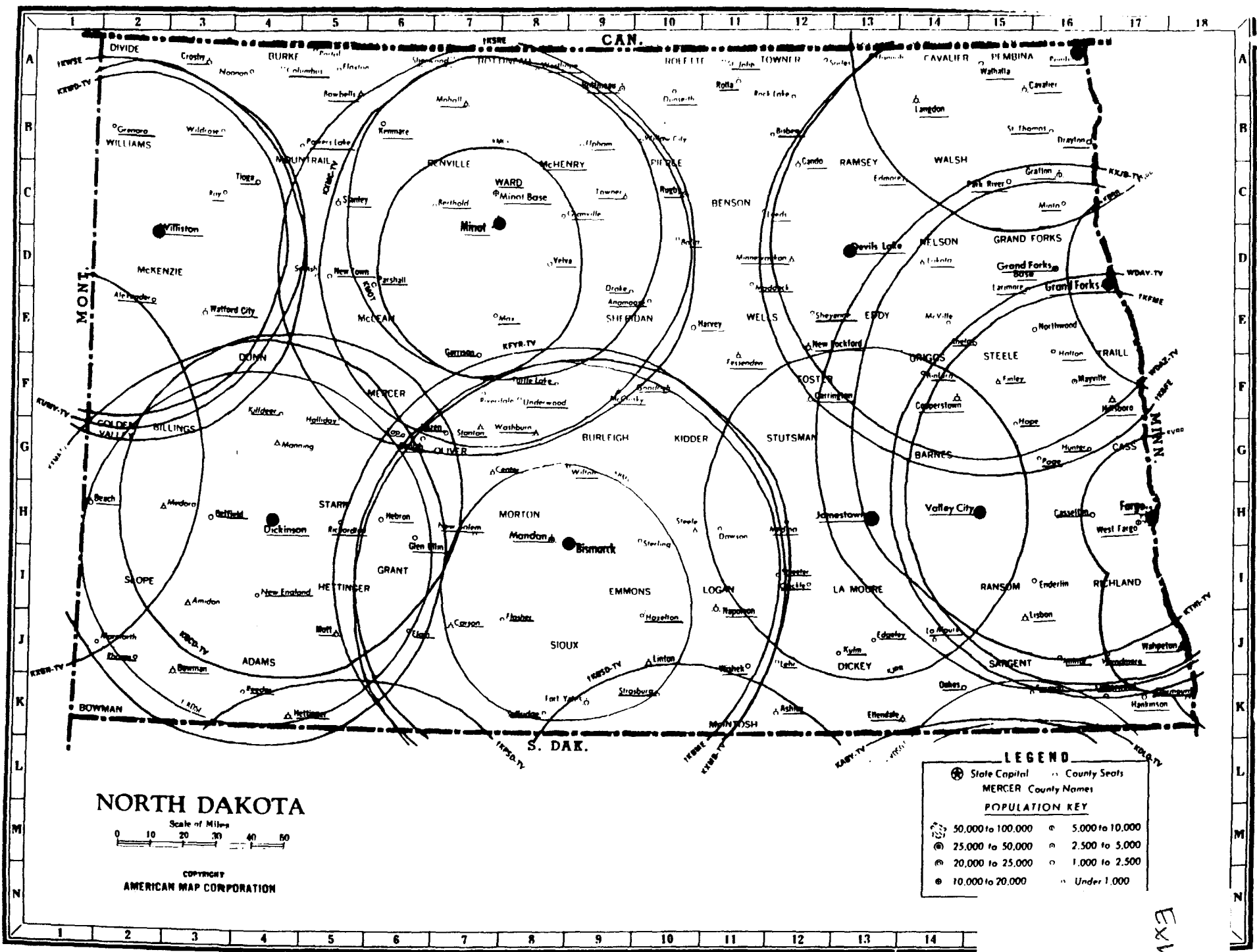


Exhibit 2

**Exhibit 7: Map of North Dakota Frontier Counties, from *Health
Care Discussion* (Fall 1998)**

Overview

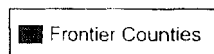
Exhibit 7

Changing demographics

continued from page 1

Chart B Frontier counties

Two thirds—35 out of 53—of the counties in North Dakota have fewer than six people per square mile and are commonly referred to as “frontier counties.”



- Two-thirds—35 out of 53—of the counties in the state are classified as “frontier counties.” Frontier counties are defined as counties with fewer than six people per square mile (Chart B).
- In 1960, 37 percent of North Dakota’s incorporated towns consisted of communities with less than 200 people. Today, that number is 52 percent.

? Did You Know...

Slope county, North Dakota’s least populated county with 846 people, is larger than the entire state of New Jersey.

More senior citizens

Rural depopulation has altered age distribution in North Dakota. Baby boomers, those born between 1946 and mid-1960s, have left the state in alarming numbers, beginning in the mid-1980s.

- From 1980 to 1990, more than half of the state’s counties lost more than half of their residents in their 20s and 30s. Losing residents in their childbearing years has resulted in a lower birth rate.
- Between 1982 and 1996, the number of births in the state fell from more than 12,600 to less than 8,350, and this trend continues.
- North Dakota’s senior citizens (people age 65 and older) comprise 15 percent

of the population and today outnumber children under the age of 10 in the state. Nationally, 12.8 percent of the population are senior citizens. “Not too many states have the proportion of elderly that North Dakota has,” Rathge noted, and he predicted that by the year 2010, 16.3 percent of North Dakotans will be elderly.

- Between 1982 and 1996, the number of births in the 35 frontier counties decreased by more than 54 percent, while births in the 18 non-frontier counties dropped by just 28 percent.

The challenges

The ramifications of rural depopulation on health delivery are far-reaching. An unbalanced population distribution in the state has created vast service delivery areas with few people to serve.

“It is becoming increasingly more difficult to maintain viable rural hospitals and clinics throughout North Dakota as the small towns continue to shrink,” Rathge said.

**Exhibit 8: Diagram of Coverage Area and Type Provided by Prairie
Public Television Station KJRE**

Exhibit 8

